UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
v.	)	*Criminal No. 90-00016-P*
	)	
JOSEPH M. SABATINO, JR. and	)	
DIANE A. SABATINO,	)	
	)	
Defendants	)	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

On March 14, 1990 the Grand Jury returned an eleven-count Indictment charging defendant Joseph M. Sabatino, Jr. (``Sabatino") with violations of the Mann Act, 18 U.S.C. ' 2421, and the Travel Act, 18 U.S.C. ' 1952, and both defendants with conspiracy to commit certain offenses[1] against the United States and with performing certain overt acts in furtherance of those unlawful activities in violation of 18 U.S.C. ' 371. The defendants seek the suppression of evidence seized from the second-floor premises located at 155 Warren Avenue in Westbrook, Maine pursuant to a search warrant issued by United States Magistrate William S. Brownell.[2] The sole proffered basis for the

[1] Specifically, the defendants are charged with causing and aiding and abetting the transportation of individuals from Maine to New Hampshire and Massachusetts with the intent that those individuals engage in prostitution and sexual acts for which they could be criminally charged, in violation of the Mann Act, and with using and aiding and abetting the use of various American Express Card accounts and the American Express collection process with intent to promote, manage, establish, carry on and facilitate prostitution offenses and to distribute the proceeds of those unlawful activities, in violation of the Travel Act.

[2] See Sabatino's Motion to Suppress Evidence with Incorporated Memorandum of Law and Diane Sabatino's Motion to Adopt Motions (sic) of Co-defendant.

coveted suppression is that the search warrant is invalid because it authorized ``an overbroad search for `mere evidence' in violation of the principles of *Warden v. Hayden*, 387 U.S. 294 (1967)."[3] Sabatino's Motion to Suppress Evidence with Incorporated Memorandum of Law at 2.

In *Warden*, the Supreme Court unequivocally repudiated the distinction between intrusions to secure ``mere evidence" from intrusions to secure fruits, instrumentalities or contraband. *Warden v. Hayden*, 387 U.S. at 310. The Court did state, however, that, ``in the case of `mere evidence,' probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction. In so doing, consideration of police purposes will be required." *Id.* at 307.

In analyzing the defendants' claim, the starting point must be the Fourth Amendment itself which provides, in relevant part:

> [N]o warrants shall issue, but upon probable cause, supported by Oath or affirmation, and *particularly describing* the place to be searched, and the persons or *things to be seized*.

U.S. Const. amend. IV (emphasis supplied). Thus, the Fourth Amendment prohibits general warrants. *Andresen v. Maryland*, 427 U.S. 463, 480 (1976). The particularity requirement is intended to prevent ``a general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). However, the Court of Appeals for the First Circuit has recognized that ``the overriding principle of the Fourth Amendment is one of reasonableness." *United States v. Fuccillo*, 808 F.2d 173, 176 (1st Cir.), *cert. denied*, 482 U.S. 905 (1987). It has observed that:

[3] Although the motion to suppress asserts other grounds as well, defense counsel represented to the court at a conference of counsel held May 15, 1990 that the defendants press only this issue.

> [d]espite this requirement, on occasion the description in a warrant has been accepted by courts although little more than the general class or type of item to be seized was listed. These exceptions involved special contexts in which there was substantial evidence to support the belief that the class of contraband was on the premises and in practical terms the goods to be seized could not be precisely described.

Montilla Records of Puerto Rico, Inc. v. Morales, 575 F.2d 324, 326 (1st Cir. 1978). The First Circuit has established two tests for assisting in the determination of whether the principle of reasonableness which underlies the Fourth Amendment is satisfied:

> first, the degree to which the evidence presented to the magistrate establishes reason to believe that a large collection of similar contraband is present on the premises to be searched, and, second, the extent to which, in view of the possibilities, the warrant distinguishes, or provides the executing agents with criteria for distinguishing, the contraband from the rest of an individual's possessions.

Fuccillo, 808 F.2d at 176.

In this case the magistrate was presented with a detailed affidavit indicating that Sabatino was actively conducting a prostitution operation under the guise of escort, massage and modeling service businesses from headquarters located on the second floor of a building situated at 155 Warren Avenue in Westbrook and that the premises were used exclusively for that purpose. Specifically the affidavit indicated, *inter alia*, the following: Women who answered various newspaper advertisements for masseuses, escorts and dancers were told to appear at the subject premises for interviews. The premises was staffed by a receptionist and contained, among other things, Sabatino's office and a number of massage rooms. Defendant Diane Sabatino was observed working with books and records for the massage business while in Sabatino's office. The massage rooms were used by Sabatino's employees to perform sexual acts on customers. Employees were frequently dispatched from the premises to perform sexual acts at off-site locations, some out of state, and on these occasions were given an American Express Card machine by Sabatino to use if the clients wanted to pay by American

Express Card. All of the women who were employed by Sabatino were prostitutes and worked for him in that capacity.

The affidavit also indicates, through statements of two named individuals who acknowledged that they had worked for Sabatino as prostitutes, that Sabatino kept records of his prostitution operation in his office on the premises and that these records consisted of American Express charge card slips, customer names, client appointment slips, names of escorts and records of payments. The affiant, an FBI agent with several years of law enforcement experience which includes the investigation of vice-related crimes such as prostitution, stated that, based on his experience and expertise and the information set forth in the affidavit, he had probable cause to believe that a search of the premises would reveal books, records and materials relating to the interstate transportation of individuals for the purpose of engaging in prostitution or in any sexual activity, and detailed a nonexclusive list of records he expected would be found relating to Sabatino's prostitution enterprise.

The warrant itself authorized the search and seizure of ``[r]ecords pertaining to Joseph Sabatino, Jr., Classic Escort and Massage, Classic BX of Maine, BX of Maine, and escort, massage, modeling and related activities, including but not limited to" a lengthy particularized description of records relating to the enterprises and activities described.

Both First Circuit tests are fully satisfied by the present record. First, the evidence presented to the magistrate clearly established reason to believe that a large collection of similar incriminating evidence was present on the premises. Second, the detailed, although non-exclusive, description contained in the warrant of the business records believed to be located on the premises provided the executing agents with the identifying characteristics of those records pertaining to Sabatino's prostitution operation which they were authorized to search and seize, and thus for the most part distinguished those records from the rest of Sabatino's possessions and, to the extent it did not,

nevertheless provided those agents with criteria for making the necessary distinction. In determining what was to be taken, the warrant left nothing to the discretion of the executing agents. *Stanford v. Texas*, 379 U.S. 476, 485 (1965).

On the basis of the foregoing and the absence of any record evidence which establishes that the government has engaged in conduct which has otherwise deprived the defendants of some right,[4] I conclude that there was probable cause to believe that the evidence sought would aid in the conviction of the defendants and that the warrant was not overbroad. Accordingly, I recommend that the defendants' motion to suppress be ***DENIED***.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 25th day of May, 1990.

_____

David M. Cohen
United States Magistrate

[4] The defendants have not requested an evidentiary hearing on the issue of police purposes, or any other issue, and it is apparent from their memorandum of law that they rely exclusively on the warrant itself in support of their motions. Although the defendants claim ignorance of the contents of the affidavit supporting the warrant application, that document is a public record and a copy could easily have been obtained by them.